

RECEIVED  
CENTRAL FAX CENTER

JAN 18 2005

VIA FACSIMILE NO.: 703-872-9306 (4 pages)

Date: January 18, 2005

Attorney Docket No.: 102116-3/5 Bayer 10,244.2 -WCG  
Bo/de 640324US2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Peter JAHN, et al.  
Serial No. : 10/697,529  
Filed : October 30, 2003  
For : DIAPHRAGM PUMP  
Art Unit : 3746  
Examiner : Michael Koczko, Jr.

---

January 18, 2005

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In response to the Restriction Requirement dated December 29, 2004,  
Applicants elect the invention of Group I, claims 1-21 and 23-29, drawn to a diaphragm  
pump, with traverse.

The Examiner has imposed a restriction requirement between claims 1-21 and  
23-29, drawn to a diaphragm pump, and claim 22, drawn to a method for conveying

liquids using a diaphragm pump.

Reconsideration and withdrawal of the restriction requirement is respectfully requested. Any search of the diaphragm pump itself is certain to include a search of the use of a diaphragm pump to pump liquids, and any search of a process for pumping liquids using a diaphragm pump is also certain to include a search of diaphragm pumps as well. Accordingly, no additional burden would be placed on the Patent Office in searching both groups together. By contrast, a very great burden will be placed on Applicants if this restriction requirement is maintained. Applicants will be subjected to twice the cost and effort in prosecuting two patent applications for an invention that should have been included in one, and will also be subjected to the continuing expense of maintaining two separate patents, whereas only one should be required to cover the full invention.

In addition, an additional burden will be placed on the public, in that the full scope of Applicants' invention will not be ascertainable from a single patent, and the public will have to find and study two separate patents to ascertain the full scope of Applicants' exclusive rights.

The great additional burden that will be placed on Applicants and the public in maintaining the restriction requirement is far greater than the slight, if any, burden that will be placed on the Patent Office in withdrawing the Restriction Requirement.

The restriction requirement should therefore be withdrawn.

In the event that the Examiner does not find it possible to withdraw the Restriction Requirement, it is respectfully requested that the non-elected subject matter be rejoined with the elected subject matter upon allowance of elected subject matter.

CONDITIONAL PETITION FOR EXTENSION OF TIME


If any extension of time for this response is required, applicant requests that this be considered a petition therefor. Please charge the required Petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess to our Deposit Account No. 14-1263.

Respectfully submitted

NORRIS, McLAUGHLIN & MARCUS

By   
William C. Gerstenzang  
Reg. No. 27,552

WCG/tmo

875 Third avenue- 18<sup>th</sup> Floor  
New York, New York 10022  
(212) 808-0700

I hereby certify that this correspondence is being transmitted via facsimile, no (703) 872-9306, to the United States Patent and Trademark Office, addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 18, 2005.

By 

William C. Gerstenzang

Date January 18, 2005